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UNCLAS SECTION 01 OF 02 ANKARA 002191

SIPDIS
SENSITIVE

EEB/TPP/IPE FOR JOELLEN URBAN
DEPT PLEASE PASS USTR FOR JCHOE-GROVES AND MMOWREY
USDOC FOR ITA/MAC/CRUSNAK, KNAJDI

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SUBJECT: THOUSANDS OF IPR CASES MAY BE DISMISSED

REF: ANKARA 2128

¶1. (SBU) Summary. As reported reftel, in July the Constitutional Court struck down provisions of the trademark law criminalizing IPR violations and gave the GOT until January 5, 2009 to pass legislation that meets constitutional requirements. With January 5 fast approaching and the Parliament in recess until January 6, it appears that Turkey is likely to miss this deadline. According to Selcuk Guzenge, Chairman of the Trademarks Association, this will cause the dismissal of approximately 9000 pending IPR cases, a prospect confirmed by Ministry of Justice (MOJ) officials. While we do not know how many of these cases involve U.S. firms, Judge Hulya Cetin at MOJ informed us that once these cases are cancelled they cannot be re-tried in the future even if a new law is passed. Several major business organizations will be meeting with the head of the Turkish Patent Institute on the evening of December 30 to ask him to push for speedy passage of a new law before the deadline, but it is unclear how effective that will be. End summary.

¶2. (SBU) On July 5, the Constitutional Court struck down the provisions of the "Protection of Trademarks" law that made trademark violations a crime on the grounds that the law was a decree with the effect of law rather than actual legislation, which violates the Constitution. The Court decision will be implemented on January 5, 2009, giving the GOT until that date to pass new legislation. Officials from Ministry of Justice (MOJ) and the Turkish Patent Institute (TPI) believed that the GOT was committed to patching this hole before the end of the year. With Parliament currently in recess until January 6, however, it looks likely that Turkey will miss the deadline.

¶3. (SBU) The impact of this failure could be extensive. Selcuk Guzenge, Chairman of the Trademarks Association (TMD), said that there are currently about 9000 pending IPR cases that will be thrown out on January 5 barring a last-minute fix. He was unable to estimate how many of these might involve U.S. firms. Hulya Cetin, an IPR judge at MOJ, confirmed that if a new law is not passed, previous illegal IPR violations would no longer be considered criminal and any cases based on the unconstitutional provisions would be cancelled. Cetin stated that "if there is no crime, there can be no case." Even if a new law is later passed, the prior violations involved in the pending cases could not be re-tried, as they would not have been crimes at the time they were committed. (Note: Previously adjudicated cases would not be affected.)

¶4. (SBU) Both Cetin and Guzenge expressed hope that some sort of solution can be achieved before the deadline. According to Guzenge, the Hakki Koylu amendment to the new patent law

(whose problems we reported on reftel) has been rehabilitated by the TPI and brought up to international standards. As this law is currently sitting with the Justice Committee, it could theoretically be brought forward rapidly to the full Parliament and approved in its own right. Guzenge claimed that this would solve the problem, at least until the new patent law is approved. Parliament could also simply pass the long-delayed patent law itself, but neither Cetin nor Guzenge thought that likely due to the detailed and technical nature of the full law. (Comment: Post has not yet seen a copy of the revised amendment, but it may well meet the immediate concerns. The GOT's long-term solution still seems to be to pass the patent law. End comment.)

15. (SBU) Guzenge informed us that in the evening of December 29, he met with representatives from affected companies, the International Investor's Association (YASED), the Union of Chambers of Commerce and Commodity Exchanges (TOBB), and the Turkish Industrialists and Businessman's Association (TUSIAD) to discuss this problem. The four organizations jointly agreed to meet with Habip Asan, Head of TPI, to urge him to press for immediate legislative action to resolve this issue. Guzenge is hopeful that the united front will convince the GOT to take this issue seriously and to reconvene Parliament long enough to pass the law.

16. (SBU) Comment: Even if the GOT takes immediate steps to reconvene Parliament, with the New Year's holiday it may not be possible to get Parliament together in time to consider and pass the legislation, meaning that the deadline is likely to pass with no action. Regardless of whether the problem is later fixed, the cancellation of thousands of lawsuits will

ANKARA 00002191 002 OF 002

merely reinforce the frequent investor complaint that the rules of Turkey's investment keep changing, making long-term planning impossible. Turkey's steady progress in terms of improving its IPR regime will also be substantially set back, at least in the short-term. End comment.

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